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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**DANIEL ALAS,**

Petitioner,

**v.**

**WILLIAM SULLIVAN, et al.,**

Respondents.

C 07-3811 SI

**ANSWER TO THE ORDER  
TO SHOW CAUSE**

Respondent William Sullivan, Warden of California Correctional Institution at Tehachapi, provides this Answer to the Order to Show Cause.

**CUSTODY**

Petitioner Daniel Alas is lawfully confined in the custody of the California Department of Corrections and Rehabilitation pursuant to a judgment imposed by the San Francisco County Superior Court on June 15, 2004. A jury convicted petitioner of second degree murder (Cal. Penal Code § 187) and found that he personally used a deadly weapon in committing the murder (Cal. Penal Code § 12022(b)(1)). CT 227, 230; RT 539-40. Additionally, the trial court found that

petitioner had a prior strike conviction (Cal. Penal Code § 667(b)-(i)) and a prior serious felony conviction (Cal. Penal Code § 667(a)). CT 230; RT 538, 565-66. On August 9, 2004, petitioner timely appealed his conviction. CT 345.

### STATE PROCEDURAL HISTORY

On January 30, 2006, the California Court of Appeal, First Appellate District, affirmed the judgment. *See* Exh. D. On March 9, 2006, petitioner, represented by counsel, sought review in the California Supreme Court. *See* Exh. E. On April 26, 2006, the California Supreme Court denied review. *See* Exh. F.

### FEDERAL PROCEDURAL HISTORY

On July 25, 2007, petitioner, represented by counsel, filed a petition for writ of habeas corpus in this Court. On July 31, 2007, this Court issued the Order to Show Cause.

### CLAIMS FOR RELIEF

Respondent denies each of petitioner's claims, denies that any of petitioner's claims state a basis for federal habeas corpus relief, and affirmatively alleges that petitioner's conviction did not result from a violation of any federal constitutional right. Respondent incorporates by reference the Points and Authorities filed in support of the Answer. Respondent specifically responds to each claim as follows:

#### **A. Claim That Petitioner Was Denied Right To Present A Defense When Court Precluded Defense From Reading Prior Testimony Of A Non-Testifying Expert**

Petitioner has failed to show the state's disposition was "contrary to, or involved an unreasonable application of" clearly established United States Supreme Court precedent or "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." See 28 U.S.C. § 2254(d)(1), (2).

#### **B. Claim That Trial Counsel Rendered Ineffective Assistance In Failing To Secure Alternative Expert**

Petitioner has failed to show the state's disposition was "contrary to, or involved an unreasonable application of" clearly established United States Supreme Court precedent or "was based on an unreasonable determination of the facts in light of the evidence presented in the State

1 court proceeding.” See 28 U.S.C. § 2254(d)(1), (2).

2 **C. Claim That Comment By Trial Court Violated His Right To A Fair Trial**

3 Petitioner is procedurally barred from presenting this claim, which the state appellate court  
4 found he forfeited by failing to object in the trial court. Accordingly, he may not seek federal habeas  
5 relief on this basis. Additionally, the claim is without merit. Petitioner has failed to show the state’s  
6 disposition was “contrary to, or involved an unreasonable application of” clearly established United  
7 States Supreme Court precedent or “was based on an unreasonable determination of the facts in light  
8 of the evidence presented in the State court proceeding.” See 28 U.S.C. § 2254(d)(1), (2).

9  
10 **D. Claim That Trial Court Erred In Responding To Jury’s Question During Deliberation**

11 Petitioner is procedurally barred from presenting this claim with respect to CALJIC Nos.  
12 8.50, 8.72, and 8.75, which the state appellate court found he forfeited by failing to object in the trial  
13 court. Accordingly, he may not seek federal habeas relief on this basis. Additionally, the claim  
14 concerning CALJIC No. 8.40 is without merit. Petitioner has failed to show the state’s disposition  
15 was “contrary to, or involved an unreasonable application of” clearly established United States  
16 Supreme Court precedent or “was based on an unreasonable determination of the facts in light of  
17 the evidence presented in the State court proceeding.” See 28 U.S.C. § 2254(d)(1), (2).

18 **AVAILABLE TRANSCRIPTS AND RECORDS**

19 Respondent has lodged with the Clerk of the Court copies of the relevant record:

20 Exhibit A (Clerk’s Transcript); Exhibit B (Reporter’s Transcript of Trial); Exhibit C  
21 (Petitioner’s Opening Appellate Brief); Exhibit D (California Court of Appeal Opinion filed January  
22 30, 2006); Exhibit E (Petition for Review); Exhibit F (California Supreme Court Order filed April  
23 26, 2006, denying review).

24 **EXPRESS AND IMPLIED FACTUAL FINDINGS**

25 Respondent alleges that all express and implied factual findings by the state courts are  
26 entitled to a presumption of correctness. 28 U.S.C. § 2254(e)(1). Respondent denies that any claim  
27 made by petitioner requires an evidentiary hearing by this Court. 28 U.S.C. § 2254(e)(2).

**GENERAL DENIAL**

Respondent denies each and every factual or procedural allegation in the petition affording a basis for relief that has not been expressly admitted in the Answer. Respondent incorporates by reference any statements of fact material to the issues herein which are contained in the accompanying memorandum of points and authorities or in the exhibits filed with this Court, to the extent not inconsistent with respondent's factual allegations.

**CONCLUSION**

Accordingly, respondent respectfully requests that the Court deny the petition for writ of habeas corpus.

Dated: January 14, 2008

Respectfully submitted,

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